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U.S. DISTRICT COURT
W.D.N.Y. BUFFALO

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2006 DEC 18 AM 11:48

DONALD JAMES ANSON,

Plaintiff,

-v-

DECISION AND ORDER
06-CV-0394Sr

BRENDA BAILEY, CDR., MD,
CAPTAIN YVONNE ANTHONY,
LIEUTENANT DEBORAH DOODY, and
APTAIN RICHARD LAWSON,

Defendants.

Plaintiff, Donald James Anson, who is detained at the Buffalo Federal Detention Facility, has requested permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) and has both met the statutory requirements and furnished the Court with a signed Authorization. Accordingly, plaintiff's request to proceed as a poor person is hereby granted. In addition, plaintiff's complaint has been screened by the Court with respect to the 28 U.S.C. §§ 1915(e) and 1915A criteria.¹

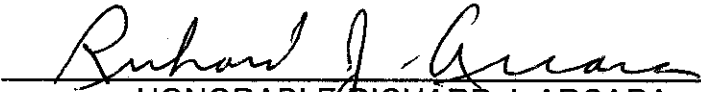
¹The Court notes that the complaint, which alleges inadequate medical care and deliberate indifference to a serious medical need under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, see *Cuoco v. Moritsugo*, 222 F.3d 99, 106 (2d Cir.2000) (the Second Circuit has "often applied the Eighth Amendment deliberate indifference test to pretrial detainees bringing actions under the Due Process Clause of the Fourteenth Amendment"), was filed on a Form Complaint used by prisoners to commence an action under 42 U.S.C. § 1983, but since plaintiff is suing federal employees in their individual capacities for the treatment or lack thereof he received as a pre-trial detainee at the Buffalo Federal Detention Facility, this action is properly construed as an action under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 398 (1971). The Court notes that on May 2, 2006, a jury rendered a finding of guilt on most counts charged in the indictment and that plaintiff's sentencing is presently scheduled for January 5, 2007. *U.S. v. Anson*, 04-CV-6180CJS.

Plaintiff also seeks the appointment of counsel (Docket No. 3), which is denied without prejudice at this time. There is insufficient information before the Court at this time to make the necessary assessment of plaintiff's claims under the standards promulgated by *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), as issue has yet to be joined.

The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the named defendants without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.

Pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: Dec. 14, 2006